

MINUTES

CITY PLAN COMMISSION/ARCHITECTURAL REVIEW BOARD

AUGUST 3, 2009

The City Plan Commission/Architectural Review Board of the City of Clayton, Missouri, met upon the above date at 5:30 p.m., Chairman Harold Sanger presiding. Upon roll call, the following responded:

Present:

Chairman Harold Sander
Steve Lichtenfeld, Aldermanic Representative
Craig S. Owens, City Manager
Jim Liberman
Marc Lopata
Scott Wilson
Ron Reim

Absent:

None

Also Present:

Catherine Powers, Director of Planning & Development Services
Jason Jaggi, Planner
Kevin O'Keefe, City Attorney

Chairman Sanger welcomed everyone to the meeting and asked that conversations not take place during the meeting and that all cell phone and pager ringers be turned off.

MINUTES

The minutes of the July 20, 2009 meeting were presented for approval. The minutes were approved, after having been previously distributed to each member.

CITY BUSINESS – DISCUSSION REGARDING NEW LANDSCAPE ORDINANCE

Catherine Powers explained that this ordinance is still in draft stage and that staff is asking for input from the members. She indicated that on May 4, 2009, staff presented a summary of topics to the Plan Commission which would promote greater environmentally responsible development in the City of Clayton. Staff has been working with Land Design Services, the City's contracted landscape architectural firm, to develop a landscape ordinance which would apply to the development of residentially-zoned properties. Catherine indicated that the attached

preliminary draft landscape ordinance provides standards for landscaping utilizing a point system. The regulations contained in the landscape ordinance would apply to all projects requiring site plan review. Examples of these projects would include all new residential buildings (single family and multi-family) and large additions to existing structures. The main components of the landscape ordinance focus on tree removal, minimum landscape standards, screening, and an approved tree list. The ordinance seeks to increase the accountability for tree removal and provide minimum standards for landscaping of properties to assure that trees are replaced with like species and to utilize a two-tier point system to preserve a diversity of trees on residential sites. Also contained in the draft ordinance is stricter enforcement through required inspections. Catherine stated that staff and Patrick Worzer of Land Design Services will provide a PowerPoint presentation to the Plan Commission explaining the draft landscape ordinance and after the discussion, staff will make the necessary revisions and present a final draft prior to scheduling a public hearing. She indicated that a survey was conducted and although caliper inches of trees lost are, for the most part, being replaced, more ornamental trees are being planted and canopy trees (i.e. Oaks, Maples) are being lost. She indicated that the ordinance provides more of a desired blend of replacement trees. She stated that Patrick Worzer, the City's contracted landscape architect, and Elizabeth Simons, Planning Intern, worked on this.

Chairman Sanger asked how many caliper inches of the 10,000 lost were replaced.

Catherine indicated that of the 10,000 lost, approximately 9,500 were replaced, but they were replaced with less desirable species. She stated that for one instance, four trees were replaced with eighteen 1" "sticks". She stated it is the City's desire to achieve diversity. She stated that staff does not want to lose the ornamental trees, but staff does want appropriate replacement. She stated that the ordinance also addresses evergreens and appropriate screening.

Chairman Sanger indicated that he found the ordinance difficult to read.

Ms. Simons began a PowerPoint presentation. She stated that the survey results were based on a 5 year time frame (June, 2004 – June, 2009) and noted that much smaller trees are being planted to replace what is lost (average caliper inches lost is 10.14; average caliper inches of tree replacement 2.92). She introduced Patrick Worzer to the members.

Mr. Worzer continued the PowerPoint presentation. He advised the members that the trend now is going towards a point based system and the purpose of these revisions is to help preserve tree diversity, prevent overcrowding and increase canopy coverage. He reiterated that these requirements would apply to all new residential construction and large additions (those that exceed 50% of the existing square footage). He indicated that this ordinance calls for a minimum size for replacement at 4" (measured at Diameter Breast Height at 4'-6" above grade).

Chairman Sanger asked what would be considered a rare or special feature tree.

Mr. Worzer indicated that an extremely old tree would be considered rare or special feature.

Marc Lopata asked about payment into the Forestry Fund.

Mr. Worzer commented that discussions are still taking place regarding the “payment in lieu of” issue. He indicated that it may have been abused.

Catherine Powers added that staff is still determining how to address that issue as it is staff’s desire to be sure and get all the trees that are appropriate for the site and that one would have to make a compelling argument not to replace lost trees on-site.

Mr. Worzer presented a slide depicting landscape plan calculation (tree replacement as determined by inches and site development as determined by points) and a slide depicting required tree points. He noted that there is an “approved tree list”.

Scott Wilson asked if the City would be bound by this list.

Catherine Powers relied “no”. She stated that the City has an arborist on staff.

Scott Wilson stated that canopy is a big deal and that a concern is that private developments are planting more ornamental trees versus deciduous trees.

Mr. Worzer presented a slide describing the “basic site landscaping requirements”, requiring one large deciduous tree in the front yard and requirements for buffers and screening for areas such as driveways, turn around areas, HVAC and accessory structures. A slide depicting “maintenance and enforcement” issues was presented. Mr. Worzer stated that inspections are required one year after occupancy date and the requirement for a landscape bond whenever tree preservation is involved and also provides for penalties for non-compliance. He indicated that it is his experience that all trees are not planted and that there is often a difference between what is on the landscape plan and what actually gets put into the ground. He stated that this ordinance provides more much more diversity and alludes to the City’s goals. He indicated that there is much more work to do regarding this new ordinance and that this is being presented at this time for discussion purposes.

Chairman Sanger referred to the example as included in the PowerPoint presentation, asking if that example would require the replacement of 4 lost trees with 8 new trees total.

Mr. Worzer concurred. He stated that under the current provisions, those 36” removed would most likely be replaced with twelve, 3” trees.

Catherine Powers commented that under the current “caliper-per-caliper” replacement requirements, sites are not only over-planted, but are not appropriately planted. She indicated that in many instances, some trees simply do not survive.

Chairman Sanger indicated that the percentages surprise him.

Catherine Powers stated that the bigger the tree, the larger the percentage.

Chairman Sanger stated that since Clayton is a “tree city”, one would believe more trees would be encouraged, not less.

Mr. Worzer indicated that he has seen 30" oaks being removed and replaced with 2-3" flowering pears.

Ron Reim commented that as the small trees grow, overcrowding can become a problem and owners begin to remove them as they die off. He stated he believes there are two issues here: what is being removed and what is being planted.

Mr. Worzer indicated that there are horticultural restraints and that every site has its own conditions. He reminded the members that these are "minimum" requirements and that the City can always ask for more.

Chairman Sanger commented that if that is the case, that needs to be appropriately written into the ordinance.

Catherine Powers agreed.

Marc Lopata stated that a graph would be a good tool to provide developers. He asked if the site disturbance equals tree replacement.

Catherine Powers replied "yes"; she stated it is a matter of attempting to custom fit to site size.

Marc Lopata asked about the possibility of overcrowding a site where an addition is being constructed.

Jason Jaggi informed Marc that the minimum developed area that would trigger replacement is 500 square feet.

Marc Lopata asked if the minimum replacement points are 25.

Jason Jaggi replied "yes".

Marc Lopata asked if this is the case even if trees are not removed from the site.

Jason Jaggi replied "yes". He reminded the members that tree replacement is only triggered when Site Plan Review is required; no requirement for ARB only projects.

Marc Lopata commented that it seems that more should be required for removal than for site disturbance.

Catherine Powers indicated that the regulations as currently contained in the draft are not set in stone; they can certainly be changed. She stated that new plantings for site disturbance are desired.

Marc Lopata asked if landscaping can be linked to impervious coverage so as not to penalize those developments with less coverage.

Marc Lopata asked if this Board wants to discuss mix and species or if that is left to the City's landscape architect.

Mr. Worzer emphasized that diversity is important and that 25% evergreens is desirable. He stated that with regard to the types of trees, that information is covered in the "approved tree list".

Marc Lopata asked about trees in the tree lawn.

Catherine Powers advised Marc that trees in the tree lawn are a Public Works issue and not covered by this ordinance.

Marc Lopata asked about the proximity of trees to the property line.

Catherine Powers indicated that the landscape architect has an idea how large a tree will grow, although this can be addressed in the document.

Chairman Sanger stated that the City may have the discretion as to the location of newly planted trees.

Steve Lichtenfeld commented that trees planted along the perimeter of the property afford substantial canopy to neighboring property; he asked if any credit is given for that or if that has been considered.

Mr. Worzer replied "no"; he stated that plantings are looked at on a case-by-case basis and that in most instances, trees that close to a property line do not get removed.

Marc Lopata requested that recent & future projects get evaluated according to the new impervious coverage and storm water mitigation policies.

Catherine Powers indicated that could be done.

Ron Reim stated that his concern is that this could encourage a developer to remove large, deciduous trees and that he does not want an unintended consequence. He then made reference to the new tree park where the trees that were planted were 8 caliper inches to start.

Jason Jaggi reminded the members that this refers to residential property.

Mr. Worzer indicated that there is significant cost when planting trees that are over 6 caliper inches.

Jim Liberman asked if a cost comparison between existing requirements versus these new requirements was conducted.

Mr. Worzer replied "no".

Jim Liberman commented that this ordinance seems to “stick it to the developer”.

Catherine Powers indicated that it is not staff’s intention to “stick it to the developer”; the plan is to replace the requirement for more trees with “better” trees.

Mr. Worzer indicated that the goal is to encourage the developer to be more sensitive.

Chairman Sanger asked what the next step is.

Catherine Powers indicated that the comments received this evening will be considered (i.e. raise replacement requirement, lower site disturbance) and staff will then re-write and bring back for discussion.

Jim Liberman indicated that he would like to see a caliper replacement requirement at a minimum of 75 to 80%.

Catherine Powers stated that if we keep going at the current pace continuing to utilize caliper per caliper replacement (i.e. replacing one tree with four trees) we will not get the types of trees desired.

Mr. Worzer stated that we are attempting to move away from caliper numbers as these numbers dilute diversity and equality and move towards types of trees desired and what trees will serve the city in 50 years.

Michael Byrd, Core 10 Architecture, indicated that Webster Groves has a similar process and that it changes the focus from “number” to “canopy”. He stated that overall, this is a good effort and suggested making provisions for a certain percentage of a specific species.

Marc Lopata stated that qualitative rather than quantitative raises more of a debate and that there needs to be a monetary payment for a shortfall as well as an increase in the monetary payment from the current requirement of \$120 per caliper inch lost.

Chairman Sanger indicated that if we do that, we are condoning planting less trees and paying more money.

Scott Wilson suggested making it expensive so that it is not an option.

Catherine Powers stated that the applicant could ask for a waiver.

Kevin O’Keefe cautioned that as these more demanding requirements are developed, if they are not met, that owner desirability comes into play and stressed the need for a balance.

Marc Lopata indicated that the concern here is the development process, not the ownership process.

Ron Reim asked what happens if after one year the property does not meet the requirements of the approved plan.

Chairman Sanger indicated that penalties have not yet been established.

Kevin O'Keefe informed the members that the City does have the authority to withhold new permits if there is a violation of a City Ordinance.

Craig Owens asked about conflicts with overhead power lines. He asked if the City enforces clearance.

Jason Jaggi indicated that Ameren UE has standards regarding clearance.

Craig Owens asked that clearance be addressed so as to avoid that conflict.

Note: Patrick Worzer left the meeting (6:45 p.m.).

Discussion began regarding sustainable development. Catherine Powers explained that on May 4, 2009, staff presented a summary of topics to the Plan Commission which would promote greater environmentally responsible development in the City of Clayton. In addition to revisions to the landscape plan requirements, staff has been researching revisions affecting impervious coverage and storm water. Finally, staff has researched methods to ensure LEED certification for Planned Unit Development and Special Development District projects which are required to be certified. Several recent development projects have been proposed with impervious coverage near the existing maximum of 55%. In many cases, the 55% allowed has eliminated the feel of greenspace and made it difficult to preserve trees. Overall, staff believes that impervious coverage requirements could be reduced to 40% and incentives granted for sustainable site features such as permeable pavers. Storm water is a complex issue involving several factors such as loss of greenspace, the impact of an inadequate and aging storm sewer system, and nuisance to neighbors due to greater density. Staff will present policy options including requirements for sewer connections and situations where rain gardens, permeable pavement and other storm water Best Management Practices (BMP's) are needed. The Plan Commission approved LEED certification as one of the criteria available to satisfy the public benefit for Planned Unit Development (PUD) or Special Development District projects. Developers have chosen LEED certification for several approved PUD/SDD projects including Centene Plaza, Trianon, and the Central-Maryland Hotel. While LEED certification has been chosen by the developer in exchange for additional density, there is no mechanism which provides penalties or verification that these projects will indeed become certified. Staff will present options to the Plan Commission which would require documentation, performance bonds, and penalties for non-compliance. The above changes could address many of the concerns of the Plan Commission. These new procedures would require several amendments to the existing zoning regulations involving a public hearing and a recommendation to the Board of Aldermen for final approval.

Jason Jaggi presented a slide depicting impervious coverage figures. He informed the members that the information being provided was based on a 5 year survey of new construction by

zoning district. He stated that the proposed changes include reducing the maximum coverage to 50% (40% front yard coverage) and setting a base at 40% to provide incentives.

Scott Wilson commented that it seems that these new regulations give a lot of credit to porous concrete when there is a lot of maintenance required for this material.

Jason Jaggi agreed. He stated that these features do have maintenance requirements.

Catherine Powers indicated that MSD gives credit for permeable materials.

Jim Liberman asked where the 40% comes from.

Jason Jaggi stated that 40% is as low as we want to go.

Catherine Powers reminded the members that the areas designated as an Urban Design District (UDD) start at a base of 40%.

Chairman Sanger commented that this will have an immediate impact on property value.

Marc Lopata stated that it will go up. He suggested providing applicants with resources to maintain pervious materials.

Catherine Powers agreed. She stated that staff sensed that this Commission believed 55% coverage was too high and that the 40% is certainly open for discussion as are other items in the document.

Marc Lopata asked about driveway width.

Jason Jaggi indicated that the UDDs require a driveway width to narrow at the street to no more than 10'.

Catherine Powers indicated that there will be additional discussions, including one with developers, before it is set for public hearing.

Marc Lopata suggested including civil engineers and Trustees.

Jason Jaggi commented that a 5% reduction in coverage is relatively easy to achieve; however a reduction by 15% (down to 40%) is a significant reduction.

Chairman Sanger stated that less coverage means a smaller house means a smaller dollar value.

Marc Lopata commented that homes will then be more affordable.

Mr. Marc Burstein, owner of 315 & 317 N. Central Avenue (formerly 319 N. Central), stated that these new regulations are of great concern to him as he will be developing one of these

two lots. He stated he paid a lot of money for this property and 40% just won't work for him. He indicated that a family needs to be able to move into these new homes and doing this will reduce property values. (He gave an example of a 6,951 square foot lot with a 2,000 square foot footprint house plus a porch, driveway and walkway, bringing coverage to about 3,357 square foot. 3,357 square foot coverage on a 6,951 square foot lot = 48% coverage).

Catherine Powers reminded the members that the 40% is the base number; additional coverage (up to 50%) can be obtained by utilizing pervious materials. She stated that the average house built within the last 5 years could not be built under these new provisions.

Chairman Sanger thanked Mr. Burstein for his input.

Discussion regarding storm water management ensued.

Jason Jaggi indicated that connection to a storm sewer is required.

Note: Scott Wilson left the meeting (7:00 p.m.).

A slide depicting existing policies and proposed requirements was presented. Existing policies are:

1. Provide direct connection to a storm sewer, if present;
2. Install an MSD-specified public storm sewer pipe if existing inlet is 200 feet or less from the subject property;
3. Install Best Management Practices (BMPs) if no storm sewer is available; and
4. Provide pop-ups with water directed to street if impervious coverage and storm water run-off are equal to pre-construction conditions.

Proposed requirements are:

1. Require direct connection to storm sewer, if present;
2. Provide storm sewer infrastructure if not present and within 150 feet of subject property and provide direct connection;
3. Install MSD-recognized storm water BMP if run-off (CFS calculation) is greater than existing conditions; and
4. If storm sewer is not available and CFS calculation shows no run-off increase, allow pop-ups to be placed ½ way between the building and lot lines, provided that swales direct water away from neighboring properties.

Marc Lopata commented that the new requirements are less strict as everything seems to be the same except the new requirements call for connection at 50 feet less than currently required.

Catherine Powers disagreed. She stated that current policy does not consider CFS (cubic feet per second) run-off calculations. She indicated that 0% increase in run-off is desired with the new requirements.

Marc Lopata stated that with these new requirements, BMPs only come into play if run-off is increasing.

Catherine Powers agreed. She indicated that this requirement is not currently codified.

Marc Lopata asked that the current distance of 200 feet remain in effect.

Catherine Powers indicated that MSD prefers no more water into the storm sewers. She indicated that Clayton does not have a good storm sewer system and that neighbors need to be protected from run-off.

Jason Jaggi advised the members that at the east end of the City there are combination sewers which MSD will not allow connection to.

Marc Lopata stated that the problem is the loss of greenspace, light and air.

A discussion regarding LEED (Green Building) certification ensued.

Catherine Powers emphasized that LEED or an equivalent third party verification organization can be utilized. She indicated that the existing standards provide an incentive for increased density as part of a PUD or SDD zoning, that the developer may choose LEED (or equivalent) certification to partially fulfill public benefit requirements and that there is no current mechanism in place to assure certification.

A slide depicting LEED (or National Equivalent) Performance Process was shown. Catherine Powers stated that once a developer states that a development will be “certified”, the City wants something in place to be sure that the certification actually happens and that there are penalties in place for non-performance.

Chairman Sanger commented that he is not seeing where LEED is required.

Catherine Powers agreed. She stated that the City has not adopted a LEED ordinance (for private developments). She stated that the Zoning Ordinance does list LEED as one possible benefit in a list of acceptable public benefits for PUD and SDD projects. She indicated that the City spoke with a representative of the US Green Building Council and it was determined that LEED should not be a requirement.

Marc Lopata asked that the City’s website provide publicity for developers that do LEED projects and/or use Energy Star products.

Chairman Sanger stated that he believes incentives should be offered to developers who do LEED projects.

Catherine Powers commented that the PUD/SDD projects that have been approved since the inclusion of LEED Certification as a public benefit have been LEED Certified, and without that certification, the developers may not have been approved for the height and/or density they desired.

Marc Lopata stated that if this group wants LEED, then only projects that agree to do LEED (or equivalent) should be approved.

Kevin O'Keefe stated that the City is obligated to enforce ordinances only, not personal agendas.

Marc Lopata stated that the ordinance is not black and white.

Kevin O'Keefe respectfully disagreed.

Marc Lopata asked how then character is defined.

Kevin O'Keefe stated that it is not defined by the inclusion of utilities within a structure.

Chairman Sanger agreed. He stated we cannot put developers' feet to the fire. He then mentioned the DeMun Pointe project which was not certified even though the developer indicated that it would be.

Catherine Powers stated that the DeMun Pointe project was not a PUD or SDD project and therefore, no need to fulfill a public benefit.

Marc Lopata stated that if a development is approved as a LEED project, then it must be LEED.

Kevin O'Keefe disagreed. He stated that a developer cannot be required to do a LEED project if the project is not a PUD or SDD project.

Marc Lopata stated that if that is the case, then their vote is meaningless if the recommendations of approval are not met.

Kevin O'Keefe agreed if there is no supporting ordinance and that there is no ordinance requiring LEED certification.

Chairman Sanger asked if the City should look at other cities ordinances (i.e. Seattle).

Kevin O'Keefe informed the members that Seattle does not have an ordinance either; LEED certification is an incentive.

Marc Lopata asked that for those PUD and SDD developments that are to be certified, that we require quarterly reports be submitted to the City.

Jim Liberman asked about the "green building fund".

Catherine Powers referred to the City of Seattle's "Density Bonus Incentive" (provided to the members in their agenda packets). She advised the members that the City has adopted the 2006 Energy Code and that the 2009 Code will be adopted in the near future.

Mr. Byrd stated that he likes the bond requirement approach.

Catherine Powers and Jason Jaggi indicated that a lot of items have been discussed this evening and asked that the members e-mail suggestions and/or comments to them so that a revised draft can be prepared and distributed for discussion at a future meeting.

Marc Lopata asked about the driveway at 405 Carrswold.

Kevin O'Keefe indicated that the applicant attempted to appeal the Plan Commission's decision, but the deadline for filing an appeal had expired and therefore, he expects compliance.

Being no further business for the Plan Commission/Architectural Review Board, this meeting adjourned at 7:50 p.m.

Recording Secretary